

ESTTA Tracking number: **ESTTA635814**Filing date: **10/29/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	New Era Cap Co., Inc.		
Entity	Corporation	Citizenship	New York
Address	160 Delaware Avenue Buffalo, NY 14202 UNITED STATES		

Correspondence information	Tara Hart-Nova Phillips Lytle LLP 125 Main Street, One Canalside Buffalo, NY 14203 UNITED STATES thartnova@phillipslytle.com, spiatkowski@phillipslytle.com Phone:7168478400
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Applicant Information

Application No	86252075	Publication date	10/07/2014
Opposition Filing Date	10/29/2014	Opposition Period Ends	11/06/2014
Applicant	WU, Tian Yu No.166 Songzi City, Hubei, CHINA		


Goods/Services Affected by Opposition


Class 018. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Imitation leather; Key cases; Briefcases; Purses; Valises; Travelling trunks; Travelling bags; Backpacks; Leather shopping bags; Handbags; Bags for sports; Leather for furniture; Leather leads; Umbrellas
Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Clothing, namely, pants, jeans, trousers, shorts, belts, fleece tops, hooded tops, sweat tops, warm-up tops, shirts, jerseys, turtle-necks, golf shirts, t-shirts, sweatshirts, sweatpants, warm-up suits, tank tops, suits, tuxedos, blazers, sport coats, sweaters; Sports shoes; Clothing made of leather, namely, jackets, vests, dresses, skirts, shorts, pants, shoes, boots, caps, hats; Inner soles; Babies' pants; Shoe uppers; Bathing suits; Caps; Foot-ball boots; Hosiery; Footwear; Soles for footwear; Boots; Sandals

Grounds for Opposition


Deceptiveness	Trademark Act section 2(a)
False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)


Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	2584973	Application Date	03/29/2001
Registration Date	06/25/2002	Foreign Priority Date	NONE
Word Mark	NEW ERA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1952/12/00 First Use In Commerce: 1952/12/00 athletic caps		

U.S. Registration No.	3759352	Application Date	09/29/2005
Registration Date	03/09/2010	Foreign Priority Date	NONE
Word Mark	NEW ERA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 006. First use: First Use: 2009/01/01 First Use In Commerce: 2009/01/01 metal money clips Class 009. First use: First Use: 2005/12/31 First Use In Commerce: 2005/12/31 sunglasses Class 018. First use: First Use: 2007/12/31 First Use In Commerce: 2007/12/31 Luggage, handbags, backpacks, and wallets		

	Class 025. First use: First Use: 2003/06/16 First Use In Commerce: 2003/06/16 Clothing for men, women and children, namely, t-shirts, sweatshirts, sweatsuits; outerwear, namely, baseball jackets, coats, pants, shorts, jeans, shirts
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U.S. Registration No.	4396437	Application Date	11/05/2009
Registration Date	09/03/2013	Foreign Priority Date	NONE
Word Mark	NEW ERA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2007/09/00 First Use In Commerce: 2007/09/00 Footwear for men, women and children		

U.S. Registration No.	3122529	Application Date	10/13/2005
Registration Date	08/01/2006	Foreign Priority Date	NONE
Word Mark	NE NEW ERA 59FIFTY ORIGINATORS OF THE TRUE FITTED NEWERACAP.COM ORIGINATORS OF THE TRUE FITTED NEWERACAP.COM ORIGINATORS OF THE TRUE FITTED NEWERACAP.COM		
Design Mark			

Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2005/02/00 First Use In Commerce: 2005/02/00 caps

U.S. Registration No.	3811674	Application Date	12/11/2008
Registration Date	06/29/2010	Foreign Priority Date	NONE

Word Mark	NE NEW ERA
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Design Mark	
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Description of Mark	The mark consists of the letters "NE" in the shape of a flag next to the words "NEW ERA".
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Goods/Services	Class 025. First use: First Use: 2004/11/30 First Use In Commerce: 2004/11/30 Headwear, athletic apparel, namely, hats and caps, baseball caps and hats
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U.S. Registration No.	2017209	Application Date	07/31/1995
Registration Date	11/19/1996	Foreign Priority Date	NONE


Word Mark	NEW ERA
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Design Mark	
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Description of	NONE
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Mark	
Goods/Services	Class 025. First use: First Use: 1961/00/00 First Use In Commerce: 1961/00/00 athletic caps

U.S. Registration No.	2031348	Application Date	10/25/1993
Registration Date	01/21/1997	Foreign Priority Date	NONE
Word Mark	NEW ERA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1952/00/00 First Use In Commerce: 1952/00/00 athletic caps		

U.S. Registration No.	2434957	Application Date	12/01/1999
Registration Date	03/13/2001	Foreign Priority Date	NONE
Word Mark	NEW ERA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 1996/12/00 First Use In Commerce: 1996/12/00 athletic caps		


U.S. Registration No.	4380795	Application Date	12/21/2011
Registration Date	08/06/2013	Foreign Priority Date	NONE

Word Mark	COOLERA
Design Mark	
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2012/05/01 First Use In Commerce: 2012/05/01 Headwear, hats, caps, knit hats and baseball caps

U.S. Registration No.	4456418	Application Date	11/20/2012
Registration Date	12/24/2013	Foreign Priority Date	NONE
Word Mark	DIAMOND ERA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2013/01/07 First Use In Commerce: 2013/01/07 Headwear, hats, caps and baseball caps		

U.S. Registration No.	4380794	Application Date	12/21/2011
Registration Date	08/06/2013	Foreign Priority Date	NONE
Word Mark	DRYERA		

Design Mark	DRYERA
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2012/05/01 First Use In Commerce: 2012/05/01 Headwear, hats, caps, knit hats, and baseball caps


U.S. Registration No.	3298501	Application Date	01/18/2005
Registration Date	09/25/2007	Foreign Priority Date	NONE
Word Mark	BY NEW ERA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2005/09/09 First Use In Commerce: 2005/09/09 Headgear, namely hats and athletic caps		


U.S. Registration No.	4258770	Application Date	09/14/2011
Registration Date	12/11/2012	Foreign Priority Date	NONE
Word Mark	NEW ERA BY YOU		

Design Mark	NEW ERA BY YOU
Description of Mark	NONE
Goods/Services	Class 025. First use: First Use: 2011/11/18 First Use In Commerce: 2011/11/18 Headwear Class 035. First use: First Use: 2011/11/18 First Use In Commerce: 2011/11/18 Retail store services and on-line retail store services featuring apparel and headwear, footwear, footwear accessories, eyewear and accessories, watches, sporting goods and equipment, electronic equipment and hardware, bags and luggage of all kinds, umbrellas, accessories made of metal, leather and imitation leather, sports and fitness products and accessories, promotional products, products related to charitable events


U.S. Registration No.	3595192	Application Date	12/06/2004
Registration Date	03/24/2009	Foreign Priority Date	NONE
Word Mark	NEW ERA FITS		
Design Mark	NEW ERA FITS		
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2004/09/00 First Use In Commerce: 2004/09/00 athletic caps		

U.S. Registration No.	4166506	Application Date	12/30/2010
Registration Date	07/03/2012	Foreign Priority Date	NONE
Word Mark	NE NEW ERA		

Design Mark	
Description of Mark	The mark consists of a circle with a series of horizontal lines in the center below the letters "NE" stylized in the form of a flag next to the words "NEW ERA", with the "NE" design and "NEW ERA" inside of a divided rectangular background.
Goods/Services	Class 025. First use: First Use: 2005/02/00 First Use In Commerce: 2005/02/00 Headwear

U.S. Registration No.	4183968	Application Date	12/30/2010
Registration Date	07/31/2012	Foreign Priority Date	NONE
Word Mark	NE NEW ERA		
Design Mark			

Description of Mark	The mark consists of a circle with a series of horizontal lines in the center below the letters "NE" stylized in the form of a flag next to the words "NEW ERA", with the "NE" design and "NEW ERA" inside of a divided rectangular background.
Goods/Services	Class 025. First use: First Use: 2009/11/01 First Use In Commerce: 2009/11/01 Clothing, namely, t-shirts, sweatshirts, hooded sweatshirts and jackets

U.S. Registration No.	4380816	Application Date	01/12/2012
Registration Date	08/06/2013	Foreign Priority Date	NONE
Word Mark	WINTERERA		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 025. First use: First Use: 2013/01/07 First Use In Commerce: 2013/01/07 Headwear, hats, caps, knit hats and baseball caps		

Attachments	76231791#TMSN.png(bytes) 78723246#TMSN.png(bytes) 77866188#TMSN.png(bytes) 76648430#TMSN.png(bytes) 77631360#TMSN.png(bytes) 74707965#TMSN.png(bytes) 74450431#TMSN.png(bytes) 75859769#TMSN.png(bytes) 85500971#TMSN.png(bytes) 85783683#TMSN.png(bytes) 85500941#TMSN.png(bytes) 76628060#TMSN.png(bytes) 85422267#TMSN.png(bytes) 76623247#TMSN.png(bytes) 85208111#TMSN.png(bytes) 85208122#TMSN.png(bytes) 85514767#TMSN.png(bytes) Notice of Opposition.pdf(641126 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Tara Hart-Nova/
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Name	Tara Hart-Nova
Date	10/29/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NEW ERA CAP CO., INC.)	
)	
<i>Opposer,</i>)	Opposition No. _____
)	
vs.)	Application Serial No. 86/252,075
)	
Tian Yu WU, an individual of China)	
)	
)	
<i>Applicant.</i>)	
)	

NOTICE OF OPPOSITION

New Era Cap Co., Inc. (“Opposer”), a New York corporation, located and doing business at 160 Delaware Avenue, Buffalo, NY 14202, believes that it will be damaged by registration of the mark shown in Application Serial No. 86/252,075, filed April 14, 2014, by Tian Yu WU, an individual of China, having an address of 166 Minzhu Avenue, Xinjiangkou Town, Songzi City, Hubei, China (“Applicant”), and hereby opposes the registration of said mark.

As grounds for the opposition, it is alleged that:

1. Commencing long prior to the filing date of Applicant’s application, April 15, 2014, Opposer has been using, and is now using, the mark NEW ERA in connection with athletic caps; clothing for men, women and children, namely t-shirts, sweatshirts, sweatsuits, outerwear, baseball jackets, coats, pants, shorts, jeans, shirts, footwear; luggage, handbags, backpacks and wallets.
2. Opposer’s use of its mark NEW ERA has been continuous since its initial use of at least as early as 1952, and its first use in interstate commerce of 1952, and has not been abandoned.
3. Additionally, Opposer is the owner of, and will rely herein upon, the following federal trademark registrations, namely Reg. Nos. 2,584,973; 3,759,352; 4,396,437; 3,122,529; 3,811,674; 2,017,209; 2,031,348; 2,434,957; 4,380,795; 4,456,418; 4,380,794; 3,298,501;

4,258,770; 3,595,192; 4,166,506; 4,183,968 and 4,380,816. The aforementioned registered marks are, in all respects, valid, subsisting and conclusive evidence of Opposer's exclusive rights to use the mark NEW ERA.

4. Opposer's mark NEW ERA is symbolic of extensive good will and consumer recognition with Opposer. Such good will and recognition have been created through substantial amounts of time, effort and investment by Opposer in advertising, promotion and sales.
5. Notwithstanding Opposer's prior rights in and to the mark NEW ERA, upon information and belief, Applicant, on April 15, 2014, filed an application to register the mark TOMORO ERA for: "imitation leather; Key cases; Briefcases; Purses; Valises; Travelling trunks; Travelling bags; Backpacks; Leather shopping bags; Handbags; Bags for sports; Leather for furniture; Leather leads; Umbrellas", in Int. Class 18; and "Clothing, namely, pants, jeans, trousers, shorts, belts, fleece tops, hooded tops, sweat tops, warm-up tops, shirts, jerseys, turtle-necks, golf shirts, t-shirts, sweatshirts, sweatpants, warm-up suits, tank tops, suits, tuxedos, blazers, sport coats, sweaters; Sports shoes; Clothing made of leather, namely, jackets, vests, dresses, skirts, shorts, pants, shoes, boots, caps, hats; Inner soles; Babies' pants; Shoe uppers; Bathing suits; Caps; Football boots; Hosiery; Footwear; Soles for footwear; Boots; Sandals," in Int. Class 25. The application was assigned Serial No. 86/252,075 and published for opposition in the official Gazette of October 7, 2014.
6. In view of the similarity of Applicant's mark, TOMORO ERA, and Opposer's mark, NEW ERA, and the identical common goods and otherwise related nature of the remaining goods of the respective parties, it is alleged that Applicant's mark so resembles Opposer's mark previously used in the United States and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive.
7. Applicant's alleged mark so closely resembles Opposer's mark that it falsely suggests a connection with Opposer in violation of Section 2(a) of the Trademark Act, because Applicant's alleged mark points uniquely to Opposer and purchasers will assume that the goods sold under Applicant's alleged mark are connected with Opposer.
8. Applicant's mark is deceptive in that it falsely suggests a connection with or approval by the Opposer.
9. Opposer's mark has been widely used and extensively publicized in the United States, and therefore, Opposer's mark has become well known and famous as a distinctive symbol of Opposer's goodwill.

10. Opposer's mark became well known and famous before Applicant made any use of its alleged mark.
11. Applicant's alleged mark will cause dilution of the distinctive quality of Opposer's mark.
12. Use or registration of Applicant's alleged mark will lessen the capacity of Opposer's famous name and mark to identify and distinguish Opposer's goods and services.
13. Opposer has been damaged, and will continue to be damaged, if Applicant continues to use or obtains registration of the mark TOMORO ERA.

WHEREFORE, Opposer prays that this Opposition be sustained, that said Application Serial No. 86/252,075 be refused registration, that no registration be issued thereon to Applicant.

Respectfully submitted,

PHILLIPS LYTTLE LLP

By Tara Hart-Nova

Tara Hart-Nova, Esq.

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Attorneys for Opposer

New Era Cap Co., Inc.

Buffalo, New York
October 29 2014

Certificate of Service

I certify that this correspondence is being served on Applicant by depositing one copy thereof with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: WU, Tian Yu, 166 Minzhu Avenue, Xinjiangkou Town Songzi City, Hubei CHINA.

PHILLIPS LYTLE LLP

By Tara Hart-Nova
Tara Hart-Nova, Esq.

October 29, 2014

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